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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/602,869	06/23/2000	Jay S. Walker	99-081	9644

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EXAMINER

PIERCE, WILLIAM M

ART UNIT PAPER NUMBER

3711

DATE MAILED: 02/27/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/602,869

Applicant(s)

WALKER ET AL.

Examiner

William M Pierce

Art Unit

3711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 January 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) 11-14 and 28-37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-10 15-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3. 6) ☐ Other:

Art Unit: 3711

**DETAILED ACTION**

Claims 11-14 and 28-37 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 4, however, made an election to advance the prosecution of the case.

***Claim Rejections - 35 USC § 112***

Claims 1-10, 15-17, 26 and 27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, ln. 2, the term "combined" is misdescriptive. From the examiner's understanding of the invention the first and second outcomes are "compared" with respect to game rules in the case of games such as blackjack and poker. The first step of "receiving...instead of on of the random outcomes" is inferential since a player receiving a random outcome has not been previously recited. "Affecting the likelihood of a game outcome" is not clear. Broadly, that appears to recite that a game outcome is not "likely" to happen. "The remaining" lacks a clear antecedent. In claims 2 and 3, how a hand is physically "replaced" is structurally unclear. This is combined with the fact that the "dealer's hand" and "player's hand" are inferential. In claim 15, the physical steps required to "adjust a bet" is not clear. As to claims 26 and 27, "a specific score" and "instead of a players hand" is inferential since a score and selecting a players hand has not been previously recited. To correct claims 2-6, 26 and 27 it is suggested that a Jepson format be used to remove inferential in unclear language.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

**A person shall be entitled to a patent unless –**

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 9, 10 and 22-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Alvarez.

As to claim 1 and 22-25, Alvarez shows a first random outcome as a "quick pick" of lottery numbers and a second random outcome as the selection of numbers by the gaming operator. A player may request a specific entry of numbers instead of the "quick pick" according to the rules to determine the game outcome. As to claim 9, 110 of

Art Unit: 3711

Alvarez is considered a "video game device". As to claim 10, play of lottery over the internet is old, well known and considered inherent.

Claims 1-3, 7, 8, 26 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Keller.

Shown is a blackjack game allowing a player to select a specific score, such as 4+5 or "dealer breaks", and comparing to the dealers hand in the case of "dealer breaks" and to the player's hand in the case of 4+5 to determine a winner.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Keller. The scores to be wagered on are considered an obvious matter of choice.

Claims 15-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alvarez. It is old and well known to lottery games to use a pick 3, pick 4 and pick 6. The payouts are adjusted according to the probability of the proposition wagered in the lottery.

#### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. McBride, Karal, Pike and Booker show blackjack games.

Any inquiry concerning this communication and its merits should be directed to William Pierce at E-mail address [bill.pierce@USPTO.gov](mailto:bill.pierce@USPTO.gov) or at telephone number (703) 308-3551.

Any inquiry not concerning the merits of the case such as **missing papers, copies, status or information** should be directed to Tech Center 3700 Customer Service Center at (703) 306-5648 where the fax number is (703) 308-7957 and the email is [Customerservice3700@uspto.gov](mailto:Customerservice3700@uspto.gov).

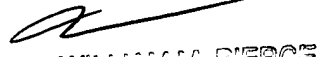
Art Unit: 3711

For **official fax** communications to be officially entered in the application the fax number is (703) 305-3579.

For **informal fax** communications the fax number is (703) 308-7769.

Any inquiry of a general nature or relating to the **status** of this application or proceeding can also be directed to the receptionist whose telephone number is (703) 308-1148.

Any inquiry concerning the **drawings** should be directed to the Drafting Division whose telephone number is (703) 305-8335.

  
WILLIAM A. PIERCE  
PATENT EXAMINER